IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1208 OF 2005

IN

WRIT PETITION NO.2329 OF 2004

Mr.Sheroor Mohandas Shetty ..Applicant

Versus

The Bank of Rajasthan Ltd., & Ors. ..Respondents

Mr.Janak Dwarkadas Sr.Advocate with Chetan Kapadia and Pratik Saksena i/by M/s.Nankani & Associates for the applicant.

Mr.Shekhar Naphade Sr.Advocate with M. Naik i/by M/s.Paras Kuhad & Associates for the Respondents.

Coram : H.L.Gokhale &
S.P.Kukday,JJ

Date : 17.06.2005.

PC

1. Heard Mr.Dwarkadas in support of this Civil Application. Mr.Naphade appears for Respondent No.1.

2. This Civil application seeks a direction to the Registrar General to return the applicant's passport and that he be permitted to travel abroad. The 1st respondent-bank has taken proceedings against respondent no.2-S.M.Finance Ltd., and the petitioner in the Debt Recovery Tribunal-I for recovery of an

amount of about Rs.1.26 crores. In that proceedings an order came to be passed initially by the Recovery officer which came to be confirmed by the Debt Recovery Tribunal-I in Appeal whereby the applicant herein was directed to be arrested. Against these two orders Writ petition No.2329/2004 was preferred. The petition has been admitted and an order of ad-interim relief was initially granted on deposit of Rs.3 lakhs and it was subsequently converted into interim relief and has been running in favour of the petitioner whereby the order of arrest has been stayed. This order was passed by the then Hon'ble Chief Justice Thakkar and Hon'ble Justice Bobade on 26.3.2004 requiring the applicant to deposit an amount of Rs.50,00,000/- over and above Rs.3,00,000/- which had been deposited earlier. The Division Bench in paragraph-6 (4) of the order has directed that the petitioner will surrender the passport on or before 1.4.2004 and will not leave India without prior permission of this Court. The amount has been so deposited and also the passport.

3. Subsequently, the applicant wanted to go abroad and therefore, he moved Civil Application bearing No.1822 of 2004. The order passed by another Division Bench (Hon'ble A.P.Shah & Hon'ble S.U.Kamdar,JJ) on 19.8.2004 (and subsequently modified on 17.9.2004) granted Civil application in terms of prayer clause-(a). It however, put the

applicant to term that his wife's passport will be deposited with the Registrar General and the applicant and/or his wife would give bank guarantee or security in the sum of Rs.1 crores. The applicant could not comply with this requisition. The applicant carried the matter in Special Leave Petition (Civil Appeal No.1220-1221 of 2005). The Apex Court on 18.3.2005 set aside a part of the order. In the last but one paragraph, the Apex court in its order allowed the appeals and set aside that part of the order which called upon the wife of the applicant to deposit passport and/or to give security. Rest of the orders passed on 17.9.2004 and 19.8.2004 were continued until the High Court passes any fresh order on an application made by either party.

4. Pursuant to this order of the Apex Court the present application has been made. Mr.Dwarkadas learned Counsel for the applicant submits that the passport which has been deposited under the order passed by the Division Bench on 26.3.2004 was only to secure the deposit of Rs.50,00,000/- and that was not by way of any independent requisition imposed on the applicant. He submits that the Court may put the applicant to any appropriate terms to grant the prayer that has been made in the Civil application. Mr.Naphade learned Counsel for Respondent No.1-bank on the other hand submitted that it will not be

advisable to allow the applicant to go abroad. The order of arrest had been stayed, but that was on the term of depositing passport. Earlier occasion when the applicant was asked to give the programme of his tour, Respondent No.1 has found that the alleged business purpose was a doubtful one. He fears that the applicant will abscond. Mr.Dwarkadas undoubtedly, denies this assertion of Mr.Naphade. Mr.Naphade further points out that it is only by coercive method, if at all, that any amount has been recovered from the applicant so far. The applicant has adjusted his financial affairs in such a way that the bank is not in a position to recover the amount which it has claimed.

5. We have noted submissions of both Counsel. In our view the applicant's liberty to go abroad need not be curtailed beyond certain limits provided he is put to appropriate terms. Accordingly, we direct the Registrar General to release the passport on the following two terms :-

(i) The applicant will file in this Court his tour programme atleast 2 weeks in advance with a copy thereof being given to the Advocates on record of the 1st Respondent-bank and also file an undertaking that he will be back in India as per that programme ;

(ii) He will give a security in immovable property of atleast Rs.50,00,000/- to the satisfaction of the Registrar General which will remain valid until the tour of the applicant is complete. On coming back to India the applicant will deposit back the passport with the Registrar General, and the security will stand discharged. The security should be such that in the event of the applicant not returning to India as per the tour programme it should be enforceable without any difficulty.

6. We add that in the event this order works out as directed with respect to the visit abroad proposed by the applicant, the same terms will govern in the event he proposes to go abroad any time subsequently. We make it clear that in that event also a similar security of immovable property of Rs.50,00,000/- with tour programme will be given and he will deposit the passport on return.

7. Civil application is allowed in the aforesaid terms.

(H.L.GOKHALE,J)

(S.P.KUKDAY,J)